

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHIGAN HEAD AND SPINE
INSTITUTE P.C. (Myrtle Spencer),

Plaintiff,

Civil Case No: 2:20-cv- 12265
Hon:
Magistrate Judge:

-vs-
PIONEER STATE MUTUAL
INSURANCE COMPANY,

**DEFENDANT'S
REMOVAL PETITION**

Defendant,
and

BEAUMONT HEALTH (Myrtle Spencer),

Intervening Plaintiff,

-vs-

PIONEER STATE MUTUAL
INSURANCE COMPANY.

and

MYRTLE SPENCER,

Plaintiff,

vs.

PIONEER STATE MUTUAL
INSURANCE COMPANY,

Defendant.

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DEFENDANT'S REMOVAL PETITION

To: The Judges of the United States District Court for the
Eastern District of Michigan

Stuart Fraser, V, Attorney for Myrtle Spencer
Martin Hogg, Attorney for Michigan Head & Spine
Bruce Pazner, Attorney for Beaumont Health

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§1441 and 1446, Defendant, Pioneer State Mutual Insurance Company, by and through its counsel, Kallas & Henk, PC, petitions for removal of Macomb County Circuit Court Case Number 20-757-NF to the United States District Court for the Eastern District of Michigan, Southern Division, and states the following in support of this petition:

1. On February 20, 2020, Michigan Head & Spine Institute, PC, filed a complaint in the Circuit Court for the County of Macomb, State of Michigan, in the case styled Michigan Head & Spine Institute, PC v Pioneer State Mutual Insurance Company, Case No. 2020-757-NF, assigned to the Honorable Carl J. Marlinga.
2. On March 9, 2020, an order was entered allowing Beaumont Health to intervene as a Plaintiff in the Michigan Head & Spine Institute case, Case No. 2020-757-NF.
3. On March 11, 2020, Beaumont Health filed its Intervening Complaint in Case Number 2020-757-NF.
4. On March 13, 2020, Myrtle Spencer filed a complaint in the Circuit Court for the County of Macomb, State of Michigan, in the case styled

Myrtle Spencer v Pioneer State Mutual Insurance Company, Case No. 2020-1024-NF, assigned to the Honorable Carl J. Marlinga.

5. On April 1, 2020, Pioneer State Mutual Insurance Company filed its Answer to Michigan Head & Spine's Complaint in Case Number 2020-757-NF.
6. On April 1, 2020, Pioneer State Mutual Insurance Company filed its Answer to Beaumont Health's Intervening Complaint in Case Number 2020-757-NF.
7. On April 8, 2020, Pioneer State Mutual Insurance Company filed its Answer to Myrtle Spencer's Complaint in Case Number 2020-1024-NF.
8. On April 21, 2020, an Order Consolidating Case Number 2020-1024-NF into Case Number 2020-757-NF was entered. A true and correct copy of all pleadings from both case 2020-757-NF and 2020-1024-NF are attached as Exhibit A pursuant to 28 U.S.C. §1446(a).
9. On July 10, 2020, Beaumont Health filed its Motion for Leave to file an Amended Complaint adding a claim against Defendant, Pioneer State Mutual Insurance Company under the Medicare Secondary Payor Act pursuant to 42 USC 1395y(b)(2)(B)(ii), and 42 USC 1395y(b)(3)(A).

10. On July 29, 2020, an Order was entered granting Beaumont Health's Motion for Leave to file an Amended Complaint adding the claims under the Medicare Secondary Payor Act. (Exhibit B). Beaumont Health's Amended Complaint, including claims pursuant to the Medicare Secondary Payor Act, 42 USC 1395y(b)(2)(B)(ii) and 42 USC 1395(b)(3)(A) was filed on July 30, 2020. (Exhibit C).
11. Accordingly, federal subject matter jurisdiction is conferred on this Court pursuant to the Amended Complaint filed by Beaumont Health on July 30, 2020, and 28 USC 1331.
12. Petitioner will serve written notice of the filing of this Removal Petition on all parties to this action. A copy of this Removal Petition will be filed with the Clerk of the Court for the County of Macomb, State of Michigan. A copy of the Notice of Removal which is being filed with the Circuit Court, County of Macomb, State of Michigan, is attached as Exhibit D.

WHEREFORE, Defendant Pioneer State Mutual Insurance Company requests that this entire action be removed to the United States District Court for the Eastern District of Michigan, Southern Division, pursuant to 28 U.S.C. §§1441 and 1446.

Respectfully submitted,

kallas & henk pc

/s/ Joseph F. Fazi
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Dated: August 20, 2020

RELIANCE UPON JURY DEMAND

NOW COMES Defendant, Pioneer State Mutual Insurance Company, by and through its attorneys, Kallas & Henk, PC, and herewith relies upon demand for trial by jury previously filed in this matter.

Respectfully submitted,

kallas & henk pc

/s/ Joseph F. Fazi
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Dated: August 20, 2020